

THE
STATUTE RAILROAD LAWS

OF THE

State of New York,

CODIFIED AND ARRANGED UNDER APPROPRIATE TITLES,

WITH

NOTES OF JUDICIAL DECISIONS,

TOGETHER WITH

AN APPENDIX OF FORMS,

AND

A TABLE OF EXISTING RAILROAD CORPORATIONS AND LOCAL
ENACTMENTS AFFECTING THE SAME.

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GAGE SALES," ETC.

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ERRATA CORRIGENDA ET MEMORANDA.

In section 269 for "*annually* expended," read "*actually* expended."

Read the note on page 504 with note to section 420.

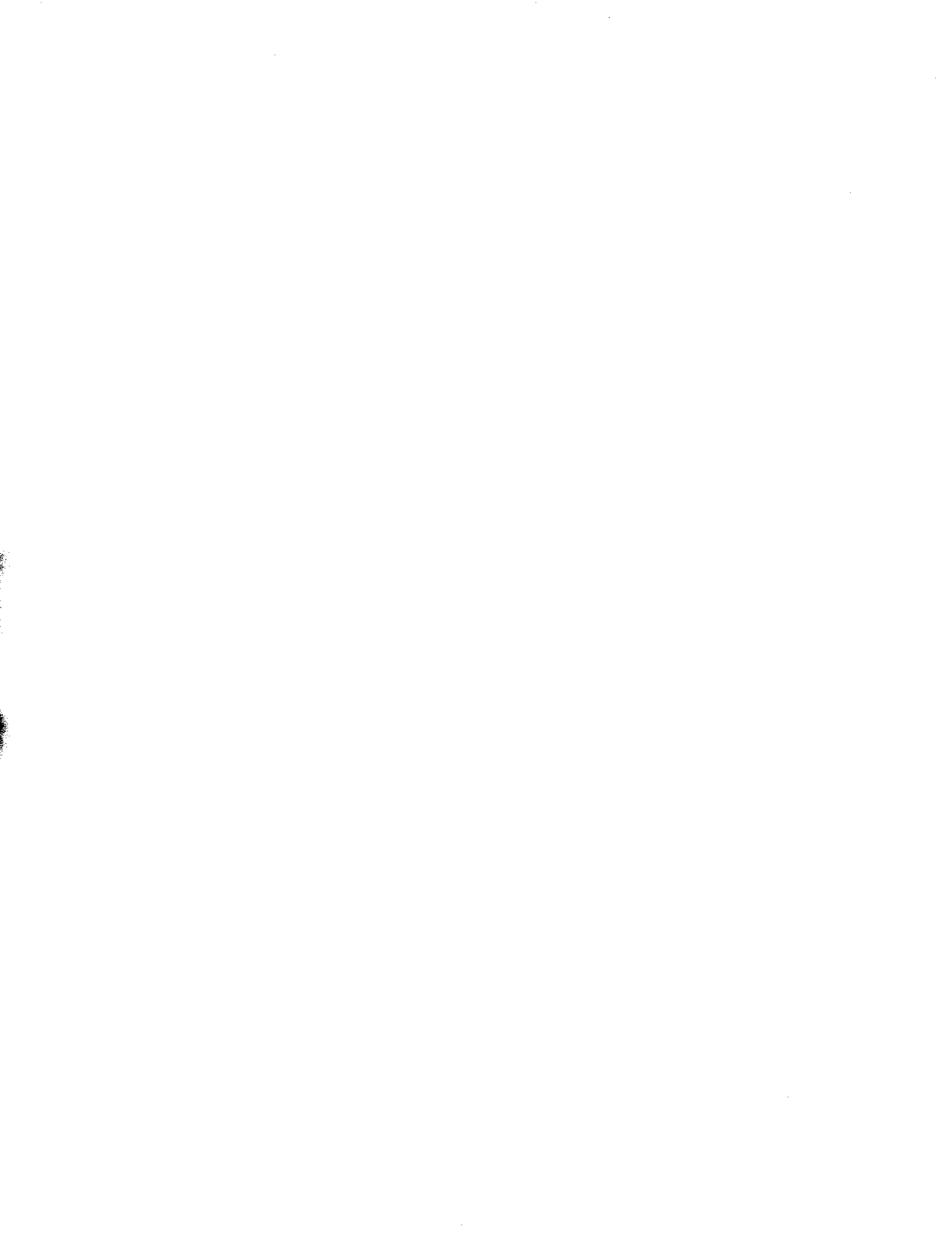
Read note bottom page 204, "Laws 1850" instead of "1830."

See chapter 82, Laws 1882, amending section 125, passed since this work went to press. The general amendment consists in adding the words "*or other purposes*" after the word "*Roadway*."

As to rights of abutting owners on Elevated Street railroads see Matter of East River Bridge and Coney Island Steam Transit Company, to appear in 26 Hun. (See Albany Law Journal, Vol. 25, No. 21, page 406), decided after work went to press.

For "*chap. 27*," page 519, read "*chap. 37*."

See *Addenda*, page 705, for laws passed in 1882, after work went to press, and before the completion of its publication.



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INTRODUCTORY CHAPTER.

SYNOPSIS OF RAILROAD LEGISLATION IN THE STATE OF NEW YORK, AND THE APPLICATION OF THE GENERAL RAILROAD ACTS TO EXISTING CORPORATIONS.

The Mohawk and Hudson Railroad Company was incorporated by a special act of the Legislature, on the 17th day of April, 1826 (chapter 253 of the Laws of 1826), and from that time down to the passage of the General Railroad Act in 1848 (chapter 140, Laws of 1848), the method of organizing railroad companies was by special acts of the Legislature granting railroad charters. Upward of two hundred of these special acts were passed prior to the first General Railroad Act above referred to. Previous to the passage of the act of 1848 there had been but little general legislation in regard to railroad corporations, the most noticeable of which were the acts of 1847 (chapter 222 in regard to connecting railroads of different corporations; chapter 272, containing, among other provisions, those enabling railroad companies to acquire valid title to lands, and providing for a change of the line of road; chapter 404 relating to changes of routes of the road and the acquisition of title to lands, and chapter 405 in regard to increasing the capital stock). The General Act of 1848, above referred to, was passed March 27, 1848, and was entitled "An act to authorize the formation of railroad companies," and was amended by chapter 145 of the Laws of 1848, exempting then existing railroad corporations from the penalties named in the twelfth section in regard to the liability of stockholders, and was further amended in 1849 by chapter 271, allowing certain privileges to companies who laid and paid for new rails; and by chapter 434, amending the twenty-eighth section of the General Act in regard to the requirements of the annual reports. On April 2d, 1850, there was passed an act (chapter 140) entitled "An act to authorize the formation of railroad corporations, and to regulate the same." This latter act, with its several amendments and additions, constitutes the general railroad statute law of the

State at the present time. This last-named General Railroad Act was not an amendment of the act of 1848, but was a substitute for it, as appears from the repealing clause contained in section fifty of that act, of which the following is a copy:

§ 1. *Repeal of the General Railroad Act of 1848.*

The act entitled "An act to authorize the formation of railroad corporations," passed March 26, 1848, and the acts amending the same, are hereby repealed; but all railroad companies formed under said act are hereby continued in existence, in the same manner as if said acts were not repealed; and such companies shall be subject to all the provisions, and shall have the same powers, rights and privileges, and be subject to the same duties as if they had been incorporated under this act; and the time limited by said act for the expenditure of ten per cent of their capital stock, is hereby extended two years from the passage of this act; and the time limited in said section of said law for their completion, is hereby extended to five years from the passage of this act; and also the time for completing any railroad organized previous to March 27, 1848, whose road was under contract prior to February 1, 1850, to be completed within the time prescribed by its charter, is hereby extended for one year. (*Laws 1850, chap. 140, § 50.*)

The Legislature in passing the General Railroad Acts, exercised the authority conferred by section one of article eight of the constitution of the State. That section is as follows:

§ 2. *The authority for the passage of the General Railroad Acts.*

Corporations may be formed under general laws, but shall not be created by special act, except for municipal purposes and in cases where, in the judgment of the Legislature, the objects of the corporation cannot be attained under general laws. All general laws and special acts passed pursuant to this section may be altered from time to time or repealed. (*N. Y. Const. art. 8, § 1.*)

It has been held that the Legislature has authority, under the constitution, to create a railroad corporation by special act whenever, in its judgment, a special act is necessary, notwithstanding the constitutional provision, and that when that discretion has been exercised the courts cannot review the action of the Legislature. (*See Metropolitan Bank v. Van Dyck, 27 N. Y., 448; Moshier v. Hilton, 15 Barb., 657; U. S. Trust Co. v. Brody, 20 id., 119; People v. Bowen, 30 id.; affirmed in 21 N. Y., 517.*) The constitution of 1846 abolished the former mode or system of creating corporations, and adopted an entirely new system under which, by general and uniform rules, the individual liability of corporators for all debts and their respective corpor-

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ations should be regulated and prescribed. Hence, statutes to regulate such liability are exclusive of all statutes passed prior to 1846. (*Rochester v. Barnes*, 26 Barb., 657.) Under the power reserved to the Legislature by the constitution and the laws of this State (*Const.*, art. 8, § 1, 1 *R. S.*, 600, § 8, *chap.* 140, *Laws of 1850*), it may impose upon a railroad corporation created by it such additional restrictions and burdens as the public good requires. (*The People ex rel. Kimball v. Boston and Albany R. R. Co.*, 70 N. Y., 569.) The Legislature which has created them may regulate the mode in which the railroad corporations may transact their business, the price which they may charge for the transportation of freight and passengers, the speed at which they may run their trains, the way in which they may cross or run upon highways or turnpikes used for public travel, and may make all appropriate regulations to protect the lives of passengers upon railroads, or upon highways crossed by them, although the power to amend the charters of such corporations has not been reserved. (*Idem.*) The provision of the constitution above cited is permissive, not mandatory. (*Matter of Tax-payers of Kingston*, 40 How., 414.) But there is no constitutional provision which prohibits a railroad franchise being conferred upon, or exercised by individuals, nor does there appear to be any objection to making such rights assignable. (Per Barnard J., *N. Y. & Harlem R. R. Co. v. Forty-second St. & Grand St. Ferry R. R. Co.*, 50 Barb., 309.)

The 49th section of the General Act of 1850, declares that all existing railroad corporations shall possess the powers and privileges contained in that act, and be subject to certain duties and liabilities. That section is as follows:

§ 3. *The General Railroad Act of 1850 made applicable to existing corporations.*

All existing railroad corporations within this State shall respectively have and possess all the powers and privileges contained in this act; * and they shall be subject to all the duties, liabilities and provisions not inconsistent with the provisions of their charter, contained in sections nine, thirteen, fourteen, fifteen, sixteen, seventeen, eighteen, nineteen, twenty, twenty-one, twenty-three, twenty-four, twenty-five, twenty-six, twenty-seven, twenty-eight (except subdivision nine), thirty, thirty-one, thirty-two, thirty-three, thirty-four, thirty-five, thirty-six, thirty-seven, thirty-eight, thirty-nine, forty, forty-one, forty-two, forty-three, forty-four, forty-five, forty-six of this act. (*Laws 1850, chap.* 140, § 49.)

The sections above enumerated refer to the following subjects: Section nine refers to the manner of increasing the

(* The General Railroad Act of 1850.)

capital stock; sections thirteen, fourteen, fifteen, sixteen, seventeen, eighteen, nineteen, twenty, twenty-one, refer to the method of acquiring lands for the road; section twenty-two to the proposed route; section twenty-three to the change of the route; twenty-four to acquiring lands and construction of road at crossings; twenty-five to acquisition of State lands; twenty-six to acquisition of land from trustees, guardians, etc.; twenty-seven to the weight of rails; twenty-eight, defining powers of the company (subdivision nine of that section relates to the transportation of passengers, and fare therefor); thirty to conductors badges; thirty-one to annual reports; thirty-two to penalty for not making annual reports; thirty-three to the power of the Legislature to alter and reduce fare; thirty-four to transportation of the mails; thirty-five to ejection of passengers refusing to pay fare; thirty-six to arrivals and departure of trains; thirty-seven to baggage and checks; thirty-eight to formation of passenger trains; thirty-nine to the ringing of bells and sounding of whistles; forty to sign-boards at crossings; forty-one to punishment for intoxication; forty-two to punishment for injuries to railroad property; forty-three to the collection of penalties imposed by the act; forty-four to the fencing of the road; forty-five to filing of maps and profiles, and forty-six to the duty of passengers riding on cars.

Questions have arisen in regard to corporations created by special charters prior to the passage of the General Railroad Act, as to how far they may be subject to the provisions of that act. For instance, the General Railroad Act of 1850 declares existing corporations to be subject to provisions not inconsistent with their charter contained in the sections above enumerated, among which are the provisions relative to acquiring title to lands, and it has been held that a pre-existing company, whose charter provided a distinct and complete method of acquiring title, was not bound to pursue the new method, but might still take that authority by their own charter, and that since the provisions of the latter act could not be grafted on the former, leaving it entire they must be deemed inconsistent (*Clarkson v. Hudson River R. R. Co.*, 12 N. Y., 304; *Vischer v. H. R. R. Co.*, 15 Barb., 37; *Mahew v. Hilton*, id., 657); and in the latter case it was said either mode might be pursued. (See, also, *Staats v. H. R. R. Co.*, 3 Keyes, 191.) The Laws of 1857, chap. 444, § 2, amendatory of the General Railroad Act, however, now provides that any railroad corporation in the State may now acquire lands by the provisions of the General Railroad Act.

Inasmuch, however, as some corporations which were created by special charters prior to the passage of the Gen-

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eral Railroad Act are now in existence, and in some of those charters they were, by the provisions thereof, stated to be governed by the statutes in force at the time of the passage of such charters, the general railroad legislation of the State prior to 1850 is set out in the succeeding chapters (special reference being thereto made), as well as the general legislation contained in the act of 1850, and the subsequent amendments thereof and additions thereto.

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